

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.04.2007

CORAM:

THE HONOURABLE MR.JUSTICE A. KULASEKARAN

WP.No.13762/2007

MP.No.1/2007

L.Puniakodi

Petitioner

vs.

The Executive Officer
Pammal Municipality, Pammal
Chennai, Kancheepuram District

Respondent

Prayer:- This Writ Petition is filed under Art.226 of the Constitution of India to issue a Writ of Certiorari to call for the records relating to the impugned order of the Respondent in Na.Ka.No.32/2007 dated 12.4.2007 and quash the same.

For Petitioner : Mr.S.Sai Raman

For Respondent : Mr.I.Paranthaman, GA

ORDER

- 1.By consent of the learned counsel on either side, this Writ Petition is taken up for final disposal. The learned Government Advocate takes notice for the Respondent. Heard both sides.
- 2.The learned counsel for the Petitioner has submitted that the Respondent has issued the impugned communication dated 12.4.2007, directing the Petitioner to remove the culvert, which is constructed for the use and purpose of hoisting their party flag, without affording opportunity to the Petitioner and that the said communication is not in accordance with the provisions of Section 339 of the Tamil Nadu District Municipalities Act, 1920 (hereinafter referred to as the Act) and prayed for quashing of the impugned order.
- 3.On the above said contentions, this court heard the learned Government Advocate for the Respondent.
- 4.No where in the impugned communication, any reference is made that any notice was issued prior to passing of the impugned communication.
- 5.Section 339 (1) of the said Act contemplates, "Time for complying with order and power to enforce in default: (1)

Whenever by any notice, requisition, or order under this Act, or under any rule, by-law or regulation made under it, any person is required to execute any work or to take any measures or do anything a reasonable time shall be named in such notice, requisition or order within which the work shall be executed, the measures taken, or the thing done."

6. Section 339(2) of the said Act contemplates, "If such notice, requisition or order is not complied with within the time so named the executive authority may cause such work to be executed or may take any measures or do anything which may, in his opinion, be necessary for giving due effect to the notice, requisition or order as aforesaid."

7. Section 339(3) of the said Act contemplates, "If no penalty has been specially provided in this Act for failure to comply with such notice, the said person shall be liable on conviction before a magistrate to a fine not exceeding fifty rupees for every such offence."

8. Section 199 of the said Act contemplates, "Prohibition against commencement of work without permission: The construction or reconstruction of a building shall not be begun unless and until the executive authority has granted permission for the execution of the work."

9. Section 363 of the said Act contemplates, "Prohibition against unauthorised dealings with public place or materials: No person shall without authority in that behalf remove earth, sand or other material or deposit any matter or make any encroachment from, in or on any land vested in the municipal council, or river, estuary, canal, backwater or water course (not being private property) or in any way obstruct the same."

10. It is clear from the Section 339 of the Act, a notice is required prior to passing any order. It is also not in dispute that under Section 199 and 362 of the Act, no work can be carried out without permission from the concerned authorities. In any event, before exercising power, the Respondent ought to have granted an opportunity to the Petitioner, but in this case, the same was not afforded to the Petitioner. Hence, considering facts and circumstances of the case, the impugned communication is kept in abeyance, subject to the conditions mentioned below:-

1. The Petitioner shall send his explanation within a period of seven days from today.

2. On receipt of such explanation, the Respondent is directed to give opportunity to the Petitioner and pass orders, on merits and in accordance with law.

3. The Petitioner in the mean time shall not proceed with further construction.

Accordingly, this Writ Petition is ordered. No costs.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

Srcm

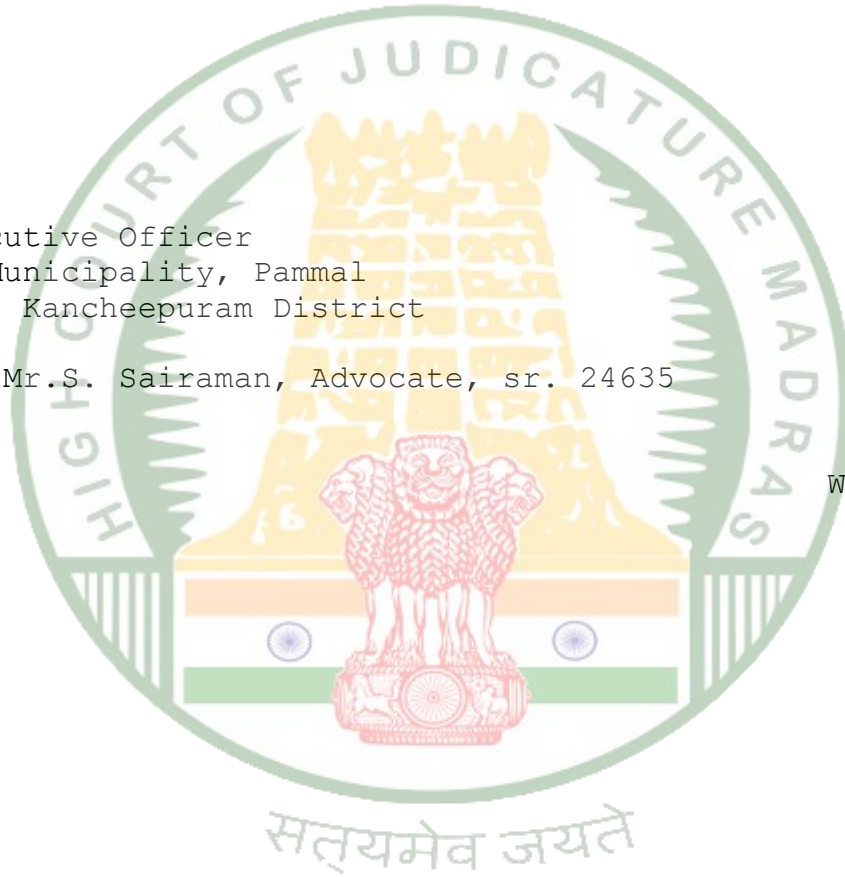
To:

The Executive Officer
Pammal Municipality, Pammal
Chennai, Kancheepuram District

1 cc to Mr.S. Sairaman, Advocate, sr. 24635

MBS (CO)
kk 19/4

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